

2004, and to any such entity formed before such date from the date any person or persons, who were not owners of the entity as of October 7, 2004, own in the aggregate a 50 percent or greater interest in the entity. The reference to the European Economic Area/European Union entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after October 8, 2004.

(5) Paragraph (c)(2)(iv) of this section applies with respect to wages paid on or after January 1, 2009.

(6) Paragraph (c)(2)(v) of this section applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

(7) The reference to the Bulgarian entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after January 1, 2007, and to any such entity formed before such date from the date that, in the aggregate, a 50 percent or more interest in such entity is owned by any person or persons who were not owners of the entity as of January 1, 2007. For purposes of the preceding sentence, the term *interest* means—

(i) In the case of a partnership, a capital or profits interest; and

(ii) In the case of a corporation, an equity interest measured by vote or value.

[T.D. 8697, 61 FR 66589, Dec. 18, 1996, as amended by T.D. 8844, 64 FR 66583, Nov. 29, 1999; T.D. 9012, 67 FR 49864, Aug. 1, 2002; T.D. 9093, 68 FR 60298, Oct. 22, 2003; T.D. 9153, 69 FR 49810, Aug. 12, 2004; T.D. 9183, 70 FR 9221, Feb. 25, 2005; T.D. 9197, 70 FR 19698, Apr. 14, 2005; T.D. 9235, 70 FR 74658, Dec. 16, 2005; T.D. 9246, 71 FR 4817, Jan. 30, 2006; T.D. 9356, 72 FR 45893, Aug. 16, 2007; T.D. 9388, 73 FR 15065, Mar. 21, 2008; T.D. 8697, 73 FR 18442, Apr. 4, 2008; 73 FR 21415, Apr. 21, 2008; T.D. 9433, 73 FR 72346, Nov. 28, 2008; T.D. 9462, 74 FR 46904, Sept. 14, 2009]

**§ 301.7701-2T Business entities; definitions (temporary).**

(a) through (c)(2)(ii) [Reserved] For further guidance, see § 301.7701-2(a) through (c)(2)(ii).

(iii) *Tax liabilities of certain disregarded entities*—(A) *In general.* An entity that is disregarded as separate from its owner for any purpose under § 301.7701-2 is treated as an entity separate from its owner for purposes of—

(1) Federal tax liabilities of the entity with respect to any taxable period for which the entity was not disregarded;

(2) Federal tax liabilities of any other entity for which the entity is liable; and

(3) Refunds or credits of Federal tax.

(B) *Examples.* The following examples illustrate the application of paragraph (c)(2)(iii)(A) of this section:

*Example 1.* In 2006, X, a domestic corporation that reports its taxes on a calendar year basis, merges into Z, a domestic LLC wholly owned by Y that is disregarded as an entity separate from Y, in a state law merger. X was not a member of a consolidated group at any time during its taxable year ending in December 2005. Under the applicable state law, Z is the successor to X and is liable for all of X's debts. In 2009, the Internal Revenue Service (IRS) seeks to extend the period of limitations on assessment for X's 2005 taxable year. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, Z is the proper party to sign the consent to extend the period of limitations.

*Example 2.* The facts are the same as in *Example 1*, except that in 2007, the IRS determines that X miscalculated and underreported its income tax liability for 2005. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, the deficiency may be assessed against Z and, in the event that Z fails to pay the liability after notice and demand, a general tax lien will arise against all of Z's property and rights to property.

(c)(2)(iv)(A) [Reserved] For further guidance, see § 301.7701-2(c)(2)(iv)(A).

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701-2 is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(C) through (c)(2)(v)(A) [Reserved] For further guidance, see § 301.7701-2(c)(2)(iv)(C) through (c)(2)(v)(A).

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701-2 is treated as a corporation with respect to items described in § 301.7701-2(c)(2)(v)(A).

(C) *Example.* (i) through (iii) [Reserved] For further guidance, see

§ 301.7701-2(c)(2)(v)(C) *Example (i)* through *(iii)*.

(iv) Assume the same facts as in § 301.7701-2(c)(2)(v)(C) *Example (i)* and *(ii)*. If LLCB does not pay the tax on its sale of coal under chapter 32 of the Internal Revenue Code, any notice of lien the Internal Revenue Service files will be filed as if LLCB were a corporation.

(d) through (e)(1) [Reserved] For further guidance, see § 301.7701-2(d) through (e)(1).

(e)(2) Paragraph (c)(2)(iii) of this section applies on and after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(e)(3) through (e)(4) [Reserved] For further guidance, see § 301.7701-2(e)(3) through (e)(4).

(e)(5) Paragraph (c)(2)(iv)(B) of this section applies with respect to wages paid on or after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(e)(6) Paragraphs (c)(2)(v)(B) and (c)(2)(v)(C) *Example (iv)* of this section apply on and after September 14, 2009.

(7) [Reserved] For further guidance, see § 301.7701-2(e)(7).

(8) *Expiration date.* The applicability of paragraphs (c)(2)(iii), (c)(2)(iv)(B), (c)(2)(v)(B), (c)(2)(v)(C) *Example (iv)*, (e)(2), (e)(5) and (e)(6) of this section expires on or before September 11, 2012.

[T.D. 9462, 74 FR 46904, Sept. 14, 2009]

**§ 301.7701-3 Classification of certain business entities.**

(a) *In general.* A business entity that is not classified as a corporation under § 301.7701-2(b) (1), (3), (4), (5), (6), (7), or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified ini-

tially as other than the default classification or when an eligible entity chooses to change its classification. An entity whose classification is determined under the default classification retains that classification (regardless of any changes in the members' liability that occurs at any time during the time that the entity's classification is relevant as defined in paragraph (d) of this section) until the entity makes an election to change that classification under paragraph (c)(1) of this section. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides special rules for foreign eligible entities. Paragraph (e) of this section provides special rules for classifying entities resulting from partnership terminations and divisions under section 708(b). Paragraph (f) of this section sets forth the effective date of this section and a special rule relating to prior periods.

(b) *Classification of eligible entities that do not file an election—*(1) *Domestic eligible entities.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is—

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

(2) *Foreign eligible entities—*(i) *In general.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a foreign eligible entity is—

(A) A partnership if it has two or more members and at least one member does not have limited liability;

(B) An association if all members have limited liability; or

(C) Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

(ii) *Definition of limited liability.* For purposes of paragraph (b)(2)(i) of this section, a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member. This determination is based solely on the statute or law pursuant to which the entity is organized, except that if the underlying statute or law allows the entity